

**MINUTES OF THE NOVEMBER 7, 2013 MEETING OF
THE DATA SECURITY AND PRIVACY COMMITTEE OF THE ILLINOIS
HEALTH INFORMATION EXCHANGE AUTHORITY**

The Data Security and Privacy Committee (“Committee”) of the Illinois Health Information Exchange Authority (“Authority”) Board, pursuant to notice duly given, held a telephonic meeting at 9:00 a.m. November 7, 2013, at the State of Illinois JRTC, 2-025, 100 West Randolph, Chicago, Illinois 60601 in Chicago, IL, with telephone connectivity.

Members Present

Dr. Nicholas Panomitros

Elissa Bassler

Jud DeLoss [phone]

David Holland

Pat Merryweather [phone]

Harry Rhodes [phone]

Mick Skott [phone]

William Spence [phone]

Welcome and Call to Order

Dr. Nicholas Panomitros, Chairman of the Data Security and Privacy Committee, called the meeting to order.

Roll Call

Ms. Elizabeth LaRoccca, Assistant Secretary to the Authority Board, confirmed the presence of the Members of the Committee indicated above.

It was acknowledged that the meeting notice and agenda were posted in advance of the meeting in accordance with the Illinois Open Meetings Act.

Consideration and Vote on Resolution Number 2013-15

Dr. Panomitros began by giving an overview of the process which resulted in the Patient Choice Recommendations. He reviewed the DSPC’s Patient Consent Management Workshop procedures, documents and comments. Dr. Panomitros thanked the Workshop’s volunteer participants and the DSPC members who participated in the Workshop.

Breach Response Protocol Policy (Attachment H)

Dr. Panomitros introduced the Breach Response Protocol Policy which is proposed to govern data breaches, either by the ILHIE Authority or by an ILHIE Participant. Laurel Fleming, a co-chair of the Breach Response Protocol Policy Subgroup, joined the meeting and discussed the proposed policy.

In addition to the Breach Policy itself, the ILHIE Authority and OHIT propose to:

- 1) modify the Data Sharing Agreement in accordance with the Breach Response Policy, including adding alternative dispute language and reviewing the insurance obligations of both the Authority and Participants under the Agreement,
- 2) explore insurance options available to the ILHIE Authority, including the ability for the ILHIE Authority to add Participants as additional insureds, or for the carrier chosen by ILHIE Authority to offer Participants' reduced price policies.

There were no comments from the Committee members.

Break The Glass Policy (Attachment G)

This is a recommendation as to whether the ILHIE Authority should seek a break the glass option through a state law change. The Subgroup also considered how to handle a self-pay patient's right to restrict the disclosure of specific health data to the patient's health plan.

The Subgroup had two recommendations:

- 1) That the ILHIE Authority honor a patient's choice in all circumstances by *not* seeking an overriding break the glass option for patients who have opted-out of the ILHIE, so long as the opt-out documentation clearly states that the glass will not be broken even in the case of an emergency; and
- 2) That the provider retain responsibility for segregating a self-pay patient's data at the patient's request.

Proposed Patient Opt-Out Choice Policy (Attachment F)

Dr. Panomitros explained that this policy sets forth the meaningful disclosure process that is required by House Bill 1017. The revisions reflect the updated ILHIE Authority consent management process, where each provider that contracts with the ILHIE Authority maintains a virtual participation preference flag for each patient.

Under this policy, a patient who wants to opt out of EHR Connect must opt out with each health care provider who is an EHR Connect user. If a patient who had opted out wants to opt in, the patient will need to opt in with each health care provider. Additionally, under this policy a patient will receive the ILHIE Notice as a new patient to the provider or at the first encounter after the provider joins EHR Connect, and on an annual basis thereafter for active patients. Providers can distribute the Notice by any means they find appropriate.

Question: Each time a patient goes to a new provider, they will have to opt-out if they don't want their information in the ILHIE?

Answer: For the time being, yes. The goal for the future is to establish a patient portal where they can handle all of their consents in one place. The technology isn't there yet, but the Authority wants to make it easier over time.

Question: How are providers to determine who an active patient is for purposes of providing an annual notice?

Answer: The definition of “active patient” continues to come up in discussions. The Authority defers to the data sharing agreement and ILHIE policies. The Authority will define what an active patient is and seeking stakeholder feedback. It might be tied to statute of limitations or who the provider has seen in the past two years.

There were additional comments on two aspects of the proposals:

- 1) In regard to the annual notice and the provider ability to choose the means, “posting” was listed. Posting doesn’t seem consistent with committee conversations.
- 2) Patients need more information on how the opt-out works and how it looks with regard to individual providers and entire health systems. This needs to be integrated into the communication with patients. Patients need to understand who all their EHR Connect users are.

A Committee responded that a posted notice would work for patients who come into the office, it wouldn’t work for active patients who don’t come into the office. Additionally, a patient may name an individual provider on the opt-out form, so the the patient would need to know they are opting out for the whole system.

One participant commented that simply putting “posting” in the policies and procedures is not clear for the providers and not what the committee discussed. It was also noted that the opt-out form should explain the opt-out process to the patient.

Upon a Committee member motion and second, the word “posting” was removed from the policies and procedures, consistent with Committee discussions.

The language of the Resolution was modified by the Committee to allow the Authority Executive Director the flexibility to “finalize and make available the ILHIE notice.”

ILHIE Notice (Attachment A)

Dr. Panomitros explained that the highlighted changes clarify the fact that the EHR Connect patient participation and consent process is at the provider level, not Statewide. The Notice also clarifies that a therapist’s personal notes are confidential.

There were no comments from the Committee members.

Signage (Attachment B)

Dr. Panomitros explained that the sign has been revised to be more attention-grabbing and easier to comprehend.

There were no comments from the Committee members.

ILHIE Website Content (Attachment C)

Approved - 3/19/14

Dr. Panomitros explained that the website content has been revised in accordance with the Committee's suggestions and consistent with the recommended changes to the Notice.

There were no comments from the Committee members.

Opt-Out and Opt-In Forms (Attachments D & E)

Dr. Panomitros explained that the forms have been updated to better clarify that the opt-out and opt-in processes take place at the provider level.

There were no comments from the Committee members.

Resolution 2013-15

Resolution 2013-15 is the Resolution Regarding Adoption of the Patient Choice in Data Sharing Recommendations, Forms, Policies and Procedures of the Illinois Health Information Exchange Authority, as distributed to the Committee.

Dr. Panomitros asked if there was a motion to approve. Ms. Bassler moved to approve and it was seconded. The motion was then opened for discussion.

Question: In regards to the last "resolved" statement of the resolution, does this empower DSPC to make changes to these documents without further ILHIE Authority action?

Answer: The intent is that it would go to DSPC first and then the Board for final approval. The Committee agreed to clarify the language: "Resolved, the Board hereby directs the ILHIE Authority to periodically review the patient choice recommendations and to recommend to the Authority's DSPC for recommendation for adoption to the ILHIE Authority Board amendments and revisions to the patient choice recommendations as appropriate." The motion to amend was moved and seconded.

Question: The language "finalize and make available" will be interpreted to give Authority Executive Director Raul Recarey authority to make changes?

Answer: Yes. The first "whereas" clause is intended to capture changes coming out of this meeting and any other relatively minor, non-substantive changes.

A member wanted to see another draft of the document.

Dr. Panomitros then proceeded to call a vote in favor of the recommendations set forth in Resolution 2013-15 as modified by the Committee. The vote was done by roll-call and the motion to recommend the Resolution to the Board passed.

Next Steps:

Another Committee meeting is likely in early December.

Public Comments

There were no public comments.

Adjournment:

Approved - 3/19/14

A movement to adjourn was proposed and seconded by members the Committee.

Minutes submitted on 3/10/14 by Sarah Nicholson